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UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

## **CIVIL MINUTES - GENERAL**

Case No. CV 08-4678 AHM (RCx) Date March 3, 2009

Title HAMILTON BEACH BRANDS, INC., v. METRIC AND INCH TOOLS, INC., *et al.*

Present: The Honorable A. HOWARD MATZ, U.S. DISTRICT JUDGE

S. Eagle Not Reported

**Attorneys NOT Present for Plaintiffs:** **Attorneys NOT Present for Defendants:**

**Proceedings:** IN CHAMBERS (No Proceedings Held)

At the hearing on February 9, 2009, the Court permitted supplemental briefing to determine whether Plaintiffs' pending application for writ of attachment should be resolved in this district or should be transferred to the Eastern District of Virginia. The question posed is whether the Eastern District of Virginia would be able to provide the prejudgment remedy Plaintiff seeks, attachment of Defendants' assets located in California.

Having considered the supplemental briefs and legal authorities, the Court is convinced that the Eastern District of Virginia would not have authority to order attachment of Defendants' assets in California.

The parties agree that Virginia law determines the question, pursuant to Federal Rule of Civil Procedure 64. They agree that the Eastern District of Virginia would be able to provide only those prejudgment remedies that are authorized by Virginia law. They disagree as to whether Virginia law authorizes the attachment of out-of-state property.

In Virginia, attachment is a purely statutory remedy. *Winfree v. Mann*, 154 Va. 683, 690, 153 S.E. 837, 839 (Va. 1930). Virginia Code § 8.01-533 provides that a person with a legal claim may seek an attachment for a claim to damages on “any one or more of the grounds stated in § 8.01-534.” Va. Code Ann. § 8.01-533 (2008). Plaintiff would have to apply for attachment under § 8.01-534(A)(1), which provides for attachment when “the principal defendant or one of the principal defendants. . . [i]s a foreign corporation, or is not a resident of this Commonwealth, and has estate [sic] or has debts owing to such defendant within the county or city in which the attachment is, or

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that such defendant being a nonresident of this Commonwealth, is entitled to the benefit of any lien, legal or equitable, on property, real or personal, within the county or city in which the attachment is.” Va. Code Ann. § 8.01-534(A)(1). According to the Virginia Supreme Court, this provision requires that the defendant have property or debts owing within the county or city in which the attachment proceeding is instituted. *Winfree*, 154 Va. at 692, 153 S.E. at 840. Without property within the state, the Virginia courts lack jurisdiction to proceed on an application for attachment on the ground of non-residence. *Abel v. Smith*, 151 Va. 568, 574-575, 144 S.E. 616, 618 (Va. 1928).

Since all of Defendants’ assets are in California, the district court in Virginia would not be able to provide the prejudgment relief Plaintiff seeks. Accordingly, the Court will not transfer this case until the Magistrate Judge has resolved Plaintiff’s pending application for writ of attachment.

Cc: Judge Chapman

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